IN THE HIGH COURT OF BOMBAY AT GOA

Appeal from Order No.25/2005

M/s. Southall Estate Agents
A Partnership firm having its Office
at 59, King Street, Southall Middlesex,
UB 2 DQ, United Kingdom,
through its Attorney Shri Avtar Singh. ..... Appellant.

V/s.

M/s. Sanathan Finance and Real Estate
Pvt. Ltd.,
A Company incorporated under the Indian
Companies Act and having its Registered
office at S-15, Sanzgiri Arcade,
Opposite Green House,
Colva, Salcete, Goa,
represented herein by its Director,
Mrs. Savitri Kumar. ..... Respondent.

Mr. M. P. Amonkar, Advocate for the appellant.

Mr. S G. Dessai, Senior Advocate with Mr. S. Kalshavkar, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

DATE : 21st AUGUST, 2006.

ORAL ORDER :

Heard learned Counsel for both the parties. Perused the record.

2. The appellant-plaintiff has preferred this appeal against the order passed

by the 1st Additional Civil Judge, Senior Division, at Margao dated 10th January, 2005 dismissing the application for temporary injunction filed by the plaintiff, which was for mandatory injunction as well as appointment of Court Receiver.

3. The appellant-plaintiff filed the suit for specific performance of the Agreement dated 16.11.2001 seeking direction to the defendant to complete thirteen flats, two shops and a swimming pool as per the agreement in all respects and hand over possession of the same to the plaintiff within the time fixed by the Court. According to the plaintiff, in terms of the agreement, the plaintiff was entitled to vacant possession of 13 flats, two shops and swimming pool as per the specifications given in the agreement, the possession of the said flats was required to be given by the defendant by 30th March, 2002. However, the defendant failed to complete the work of the suit flats, shops and the swimming pool and put the plaintiff in possession of the same. It is also sought to be made out on behalf of the plaintiff in the interim proceeding that as of the date the defendant has put up the building and partially completed the suit flats, however the defendant in order to put the said flats and shops to use has to provide water and electricity supply and requires external painting, storm water gutters etc. According to the plaintiff, it has

performed the obligation under the agreement. However, the defendant failed to comply its part of the contract and hence the application came to be filed, seeking mandatory injunction for direction to the defendant to complete the suit flats in all respects, especially to do the works mentioned in para 4 of the application filed before the trial Court and also for appointment of Court Receiver to take possession of the suit flats.

The respondent-defendant, inter alia, denied all the allegations on various counts and sought rejection of the application by dismissal of the application on various counts.

4. The learned trial Judge, on hearing both the parties, was of the view that the plaintiff had failed to make out prima facie case. It was further held that the balance of convenience tilts in favour of the defendant and further the plaintiff failed to prove that irreparable loss would be caused if the application was rejected and, as such, the application came to be rejected. Hence, the present appeal.

5. At the outset, it is to be noted that the learned Counsel for the appellant took me through the documentary evidence in his favour including the final agreement between the parties dated 16.11.2001 which shows that it is the agreement between the plaintiff and the defendant.

However, if we peruse the entire record relating to the dispute at hand, it must be noted that since the beginning the plaintiff was working only as an agent for 13 persons who are Non-Resident Indians and had collected payments from them for purchase of the said flats. Thereafter, by virtue of the last agreement the plaintiff has tried to step into the shoes of the said 13 NRI persons. However, the fact remains that ultimately, the record is sufficient to show that the plaintiff is acting for and on behalf of the said 13 NRI purchasers. Perusal of the order passed by the trial Court shows that the trial Court while adjudicating the application was of the view that perusal of the plaint shows that notices were sent by the Advocate for the plaintiff on behalf of the persons to whom the flats were agreed to be sold. However, these persons have not been made parties to the suit and the plaintiff has filed the suit in its individual capacity and not as power of attorney of the said persons. Moreover, if at all the plaintiff is acting as their agent, no power of attorney has been brought on record. Besides this aspect, it is also not clear if at all the payments for 13 flats, shops and the swimming pool are made or not as alleged by the plaintiff which would be the question of fact to be decided only in the course of the trial at the stage of final hearing.

The trial Court appears to have found that no case is made

out for grant of mandatory injunction or for appointment of Court Receiver and a perusal of the record including the compilation of the documents leaves no doubt that the plaintiff has failed to make out a prima facie case for either of the said reliefs claimed, and, therefore, no fault could be found with the order passed by the lower Court wile dismissing the temporary injunction application.

6. Hence, I concur with the findings recorded by the trial Court and hold that the appeal is devoid of any merit and, as such, stands dismissed with no order as to costs. However, it is directed that the suit shall be expedited by the lower Court as far as possible and pending the suit, the respondent shall not create any third party interest on the suit property.

P.V. KAKADE, J.

ssm.